STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
VICTORIA MATSON,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 1998CF2198
	)	EEOC NO(S): N/A
and	)	ALS NO(S): 11187
	)	
AMERITECH,	)	
	)	
	)	
Respondent.	)	

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 9th day of February 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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AMERITECH,	)	
	)	
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RECOMMENDED ORDER AND DECISION

The public hearing in this matter has been completed and the parties have submitted their post-hearing briefs. The matter is now ready for decision.

FINDINGS OF FACT

The following findings of fact are based upon the public hearing record in this matter. Factual assertions made at the public hearing, but not addressed in these findings, were determined to be unproven by a preponderance of the evidence or were otherwise immaterial to the issues at hand.

1. On February 15, 2000, Complainant, Victoria Matson, filed a *Complaint of Civil Rights Violation* with the Illinois Human Rights Commission (the Commission), alleging that Respondent, Ameritech, unlawfully discriminated against her in that it failed to promote her to the position of Marketing Support Specialist (MSS), subjected her to unequal terms and conditions of

employment by giving her a warning and harassed her in several different ways all due to her physical handicap of trigeminal neuralgia.

2. Complainant is handicapped as that term is defined by the Act.

3. Complainant began working for Respondent on July 15, 1991.

4. Throughout her employment, Complainant has been a member of the International Brotherhood of Electrical Workers (IBEW). Many of her terms and conditions of employment are governed by the collective bargaining agreement (CBA) between IBEW and Ameritech.

5. In 1997, Complainant worked at Ameritech's Integrated Services Digital Network (ISDN) Provisioning Center in Wheaton, Illinois as a Service Order Writer A (SOWA). Complainant worked as a SOWA in the Prime Centrex Marketing Group.

6. Diane Moshivitis was the manager of the Center in 1997.

7. Betty Mickel became the Network Director at the ISDN Center in May 1997. Mickel reported directly to Diane Moshivitis.

8. In April 1997, Barb (Arens) Scott was promoted from MSS to manager of her team, the Prime Centrex Marketing Group. That team included approximately 20 to 30 PC's, MSS's and SOWA's.

9. Scott managed the Prime Centrex Marketing Group from April, 1997 to February, 1999 during which time Matson was one of her subordinates.

10. Scott and Matson had previously been coworkers in the Prime Centrex Marketing Group and Matson considered Scott a friend.

11. When Mickel became Network Director at the ISDN Center, she implemented new rules that the managers, such as Scott, were expected to enforce.

12. By enforcing the rules implemented by Mickel, Scott's relationship with Matson and other employees in the group changed and the environment became tension filled.

13. The Collective Bargaining Agreement (CBA) that governed Matson's employment allowed managers to assign employees to a higher paying job title within the bargaining unit. This practice is commonly known as "working up." The "work-up" provision was only to be used to fulfill a temporary need.

14. If there is a long-term need to have an employee perform the duties of a higher paying job, Respondent's management is required to submit a job requisition to Respondent's Staffing Department. The Staffing Department is the body that actually selects the applicant who fills the job, not the manager who submitted the job requisition.

15. If a work group cumulatively works 120 or more scheduled shifts in a higher paying job title during a calendar year, the most senior qualified employee who was working up is entitled to a promotion to the higher paying job.

16. When Scott became manager of her team, she was told by Angie Jenkins, her predecessor, that the work-up arrangement for Matson should continue.

17. When Scott became manager of the team, Scott never discussed Matson's work-up arrangement with Moshivitis or Mickel.

18. When Mickel became Network Director in May, 1997 she did not know that employees were regularly working up in higher paying jobs.

19. In August, 1997, Moshivitis learned from Mickel that Joyce Peterson was coding all of her shifts as work-up shifts and that Peterson believed that when she reached the required number of shifts under the Collective Bargaining Agreement, she would be permanently placed in the project coordinator

position and that she was entitled to a promotion. Moshivitis then asked Mickel to investigate the matter

20. Complainant was "working-up" to an MSS and thus receiving a higher rate of pay.

21. On September 2, 1997, Complainant was diagnosed with trigeminal neuralgia a chronic condition of the facial nerve.

22. In 1997, Lynn Borge was an MSS and Complainant Matson's union steward. Both worked at Respondent's Wheaton facility, commonly referred to as the ISDN Center.

23. In 1997, Complainant held the title of Service Order Writer A or SOWA.

24. In 1997, the MSS's were being crossed trained in SOWA functions. Complainant was conducting some of the training of the MSS personnel in the SOWA function.

25. In 1997, there was a blending of the SOWA and MSS functions at Respondent's Wheaton facility.

26. On August 25, 1997, Deborah Schwartz directed ISDN management to terminate the permanent work-up arrangements and use the work-up provision only for a temporary need. Soon after, Barb (Arens) Scott informed Matson that she could no longer permanently work-up because of a directive from Labor Relations.

27. On August 25, 1997, Schwarz did not know who had been on a permanent work-up arrangement.

28. Deborah Schwarz did not have knowledge of Matson's handicap on August 25, 1997.

29. Respondent's discipline process is that of progressive discipline. A verbal warning and then a written warning are the first and second steps in the progressive discipline process.

30. Respondent's counseling of an employee is not discipline.

31. Respondent's union employees have a right to have a union steward present during a disciplinary meeting.

32. The only disciplinary meeting that Lynn Borge sat in on as union steward for Matson occurred in October 1997 after Matson left her name on an order. The other person present at that meeting was Barb Scott. At that meeting, Barb Scott told Borge that she was going to give Matson a verbal warning, not a written warning.

33. Matson and Scott made physical contact at work on only one occasion when Scott accidentally bumped into her while passing through the same door in the opposite direction. This incident occurred in the fall of 2000.

34. The collective bargaining agreement (CBA) requires that an employee is to call his or her supervisor if the employee is not able to start work at the beginning of his or her scheduled shift.

35. On several occasions, Matson failed to telephone Scott to let her know that she would not be coming in to work. Due to Matson's failure to call Scott, Scott telephoned Matson to inquire about her whereabouts and the reason for her absence.

36. As Matson's supervisor in November 1997, Scott had authority to direct Matson to return to her work station.

37. Scott had a natural tendency to be abrasive with all of her subordinates.

CONCLUSIONS OF LAW

1. Complainant is an "employee" of Respondent as that term is defined under the Illinois Human Rights Act. *775 ILCS 5/2-101.*
2. Respondent is an *"employer"*, as that term is defined under the Illinois Human Rights Act, and is subject to the provisions of the Act. *775 ILCS 5/2-101.*
3. Complainant is handicapped as that term is defined by the Act.
4. The Commission has jurisdiction over the parties and the subject matter of this action.
5. Complainant has not established a *prima facie* case of handicap discrimination in that she failed to prove by a preponderance of the evidence that Respondent subjected her to any adverse employment action because of her handicap.

DISCUSSION

The issues presented by this matter are whether Ameritech discriminated against the Complainant, Victoria Matson (Complainant or Matson), on the basis of her alleged handicap (trigeminal neuralgia) by (1) denying her a promotion in September, 1997; (2) giving her a verbal warning on October 31, 1997; and (3) harassing her in late 1997 and early 1998. Based on the totality of the record in this case, none of Matson's claims cannot be sustained under the Illinois Human Rights Act.

To establish a *prima facie* case of handicap discrimination under the Act, Complainant must establish three elements: (1) she is handicapped as that term is defined by the Act; (2) that Respondent took an adverse action against because of that handicap, and (3) that her handicap is unrelated to the performance of her job duties. *Habinka v Human Rights Commission,* 192 Ill App 3d 343, 548 NE2d 702 (1st Dist 1989); *Kenall Mfg Co v Illinois Human Rights Commission,* 152 Ill App 3d 695, 504 NE2d 805 (1st Dist 1987).

Complainant has clearly established the first and third elements of her *prima facie* case. Matson has shown that she suffers from trigeminal neuralgia, clearly a handicap under the Act. She has also proven that her handicap was unrelated to the performance of her job duties. The problem that Matson encounters throughout this case is proving that Respondent took any adverse action against her due to her having a physical handicap, specifically, trigeminal neuralgia.

DENIAL OF PROMOTION

Complainant argues that she was entitled to a promotion in September, 1997 under the terms of the Collective Bargaining Agreement (CBA) and that the Respondent failed to give her that promotion because she suffers from the handicap of trigeminal neuralgia. The first question that must be addressed is whether or not Complainant was actually entitled to the promotion to Marketing Support Specialist (MSS) in September of 1997. After a careful review of the record, it is quite clear that she was not.

Complainant has not proven by a preponderance of the evidence that she was the "senior most qualified employee so assigned," a requirement under Article 23.06 of the CBA in order to qualify for the promotion. Thus, even if Complainant can prove that she was the employee in her group that worked up the most qualifying "work-up shifts" and that the group as a whole satisfied the 120 hour shift requirement needed for promotional purposes, on the record she has not shown that she was a more senior employee than Diane Ray who was part of the same work group as Matson. In addition, the record is devoid of any admissible evidence proving Matson's claim that, if she had prevailed on her grievance, Diane Ray - - whom Matson suggested failed the test once - - would not have been able to test a second time for the position.

Both Complainant and Respondent agree that, for an employee to be entitled to a promotion to a higher paying job (e.g. SOWA to MSS), the CBA requires that the employee's work group cumulatively work at least 120 scheduled shifts in that higher

paying job during the calendar year. In calculating those hours, Complainant and Respondent differ in their interpretation of the term "scheduled shift" as it is used in the CBA. Complainant argues that he term "scheduled shift" includes not only hours "worked up" during an employee's *regularly* scheduled shift, as Respondent claims, but also includes hours "worked up" as part of overtime, as well as time coded as DITM and DITA.

The problem with Complainant's argument is that she never presented any credible evidence to support her interpretation of the term "scheduled shift" as used in the CBA. Complainant has the burden of proof and without any evidence to support her proposed interpretation, such as testimony from an IBEW official, it is unreasonable for the administrative law judge to simply assume that her interpretation of the CBA is correct.

Furthermore, Complainant has not proven that Debra Schwartz had knowledge of her handicap at the time she issued the directive to ISDN Center management that they were to terminate the permanent work-up arrangement put in place by prior management. Complainant has provided nothing for the record which calls into question Mickel's testimony that Schwartz gave her that directive on August 25, 1997. Thus, Schwartz could not have been motivated by Matson's handicap because Complainant was not diagnosed with trigeminal neuralgia until September 2, 1997. In fact, on September 2, 1997, prior to Matson's appointment that day with the doctor who diagnosed her with trigeminal neuralgia, Scott sent Kasik an email at 9:34 a.m. advising her that Matson was not to code her time DITA. Complainant's failure to establish that Schwartz - - the lone decision maker- - had actual knowledge of her handicap at the time she issued the directive precludes her from establishing that she was denied a promotion to MSS due to her handicap of trigeminal neuralgia. *Tubb and Firestone Tire and Rubber Co.*, IHRC, 3908(S), June 29, 1995.

VERBAL WARNING

Complainant also has not proven by a preponderance of the evidence that her handicap motivated Scott's decision to give her a verbal warning on October 31, 1997 - - a verbal warning which upon the request of Lynn Borge was reduced to a "record of counseling" for Matson. Specifically, Complainant does not contest the fact that, on two occasions toward the end of October, 1997, she left work without removing her name from an unfinished work order and failed to notify Scott that the order was not completed. This was a clear violation of one of Respondent's work group rules and there is no indication in the record whatsoever that Matson was singled out by Scott for a verbal warning because of Matson's handicap. The record supports the finding that, soon after Scott was promoted to manager, she made a point to clearly explain the App + 2 processing deadline and the process for handling an unfinished work order. The record firmly establishes that Scott had counseled other SOWA's upon learning that they had left their names on unfinished orders at App + 2 without notifying her. Thus, Complainant's claim that she was given a verbal warning because of her handicap when she *twice* did not follow proper procedure for unfinished work orders is a stretch of the legal imagination and is most certainly a baseless claim that should be dismissed.

HARASSMENT

Complainant has also failed in her attempt to prove that Respondent subjected her to work place harassment because of her handicap. The Commission has repeatedly emphasized that "sporadic and relatively innocuous incidents" do not meet the standard for actionable harassment. *Schoultz and Wildwood Industries,* IHRC, S-4310, March 1, 1996. In determining whether conduct rises to the level of actionable harassment, the following factors need to be considered: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct; (3) the physically threatening or humiliating nature of the conduct; and (4) the interference that the conduct had on the

employee's work performance. *Ford and Caterpillar, Inc.*, IHRC, 7628(S), October 28, 1996.

At the hearing, Matson testified to an allegedly harassing incident in which she was talking to another employee outside her work station when Scott yelled at her to return to her station. Matson seems to be claiming that the harassing nature of this incident was Scott's tone of voice as it appears from the transcript that Matson does not dispute that Scott had the authority to ask her to return to her desk and that she was not disciplined by Scott for the incident. Considering the four (4) factors provided by the Ford case above, Scott raising her voice and telling Matson to return to her desk most certainly does not amount to the type of harassment contemplated by the Human Rights Act. In fact, this was a one time incident in which Matson was simply being told to follow a work rule. It clearly did not involve any type of physically threatening behavior nor would a reasonable person find Scott's instruction in a loud tone of voice to be humiliating. There is also no credible indication in the record that Scott's tone of voice had interfered with Matson's work performance.

Matson further alleges that she was harassed by Respondent on three separate occasions when Scott forcefully pushed her while at work. During the hearing, Scott admitted that on one occasion she did in fact make physical contact with Matson as they were both passing through a door in opposite directions. Scott testified that this incident occurred in the fall of 2000 and that it was completely accidental. Matson's hearing testimony with regard to any intentional pushing or shoving done by Scott is simply not credible for a few reasons. First, Matson's sworn interrogatory answers with regard to any shoving incidents by Scott are inconsistent with her hearing testimony. Her interrogatory answers state that in or around August, 2000, Scott pushed/shoved her on four (4) occasions. However, at the hearing, Matson testified that there were three (3) shoving incidents by Scott and that they all occurred in late 1997 and early 1998.

Secondly, Matson testified that she reported this conduct to Chip Scrull but, when Scrull testified, he very credibly denied that Matson had ever told him of such an incident. Interestingly enough, Matson's testimony was not corroborated by a single witness even though she alleges that two of the pushing incidents by Scott were witnessed by coworkers.

Lastly, Complainant's claim that Scott harassed her by asking her to call in to work when she was going to be absent is sorely lacking of any evidence to back it up. The CBA explicitly states that if an employee is not able to begin work at the start of her shift, the employee is expected to call her supervisor and let that supervisor know. In fact, Complainant has failed to present any evidence showing that she was singled out in terms of having to call Scott to inform her of an absence from work. Rather than harassment, the requirement of Matson to call in to report an absence was one of Respondent's legitimate work rules that Matson at times chose not to follow.

Complainant has, without a doubt, failed to prove that Respondent subjected her to the type of severe or pervasive harassment that creates a hostile work environment or any type of actionable work place harassment because of her handicap. *Jackson and College of Lake County Dist. No. 532*, IHRC, 11325, July 2, 2002.

Finally, Matson's *Motion to Amend the Complaint Concerning Disparate Treatment Count* is denied for the simple reason that Complainant has failed to show good cause to amend as required by Section 5300.650 of the Commission's procedural rules. Complainant's motion is not only extremely vague and nonspecific as to exactly what the amendment or amendments to the complaint would be, as well, she has not provided any good reason as to why she waited until after post-hearing briefing was completed to attempt to amend her complaint.

CONCLUSION

For all of the above reasons, I recommend that the instant Complaint of Civil Rights Violation along with the underlying Charge of Discrimination be dismissed with prejudice.

ENTERED: March 30th, 2009

HUMAN RIGHTS COMMISSION

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MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION